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| <p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street<br/>Denver, Colorado 80202</p> <p><b>Plaintiff:</b><br/>STAPLETON FOR COLORADO, a Colorado campaign committee,</p> <p>v.</p> <p><b>Defendants:</b><br/>KENNEDY ENTERPRISES, LLC, a Colorado limited liability company, and DANIEL KENNEDY, a Colorado resident</p>  | <p>DATE FILED: June 25, 2018 4:32 PM<br/>FILING ID: 8AA04E9EFF710<br/>CASE NUMBER: 2018CV32348</p> <p>▲ COURT USE ONLY ▲</p> |
| <p>Attorneys for Plaintiff Stapleton For Colorado:</p> <p>Name(s): Christopher O. Murray, #39340<br/>Stanley L. Garnett, #12282<br/>Amanda K. Houseal, #49628</p> <p>Address: Brownstein Hyatt Farber Schreck, LLP<br/>410 Seventeenth Street, Suite 2200<br/>Denver, CO 80202-4432</p> <p>Phone Number: 303.223.1100<br/>FAX Number: 303.223.1111<br/>E-mail: cmurray@bhfs.com<br/>sgarnett@bhfs.com<br/>ahouseal@bhfs.com</p> | <p>Case Number:</p> <p>Div:</p>  |
| <p><b>COMPLAINT</b></p>   |  |

Plaintiff Stapleton for Colorado (“Plaintiff” or “the Stapleton Campaign”), by and through its attorneys, Brownstein Hyatt Farber Schreck, LLP, hereby files the following Complaint against Kennedy Enterprises, LLC (“Kennedy Enterprises”) and Daniel Kennedy (collectively, “Kennedy”), and alleges and complains as follows:

**I. GENERAL ALLEGATIONS**

1. This case arises from Kennedy’s unethical practice of using shadow petition circulators whom Kennedy knew were unqualified to circulate candidate petitions under

Colorado law. Without the Stapleton Campaign’s knowledge or approval, Kennedy had these shadow circulators gather signatures of electors on behalf of the Stapleton Campaign in support of Walker Stapleton’s campaign for Governor of Colorado. These shadow circulators then passed the petition sections including elector signatures they had gathered to other apparently legally qualified circulators who were included on the roster of petition circulators provided to the Stapleton Campaign by Kennedy. These apparently qualified circulators would then execute the petition sections as though they, and not the unqualified shadow circulator, had gathered the signatures on those petition sections. This was done in flagrant violation of Colorado law and in breach of the contract between Kennedy Enterprises and the Stapleton Campaign.

2. Perhaps worse than the conduct of using shadow circulators itself were Kennedy’s efforts to conceal it from the Stapleton Campaign. On or shortly after February 12, 2018, Kennedy was asked by another client to re-collect hundreds of signatures gathered in support of another candidate for statewide office in Colorado. That campaign made this request because it had been alerted by individuals working for yet another campaign that they had information showing that Kennedy used shadow circulators to gather those signatures. Kennedy proceeded to fulfil his other client’s request. But Kennedy did not tell the Stapleton Campaign about any of this. Instead, Kennedy encouraged the Stapleton Campaign to turn in its signatures as quickly as possible. Acting on Kennedy’s urging, the Stapleton Campaign submitted its signatures on Friday, February 23, 2018, completely unaware that as it did so, Kennedy was re-collecting hundreds of signatures in support of another statewide candidate who had been tipped off to his shadow circulator scheme.

3. Kennedy’s efforts at concealment did not end there. On or about March 6, 2018, the Stapleton Campaign was contacted by a television reporter. This reporter indicated that he was in possession of a recorded telephone conversation (the “Velasquez tape”) in which an individual named Daniel Velasquez stated that he and a crew of “felons” illegally circulated petitions on behalf of Stapleton for Colorado. A representative of the Stapleton Campaign met the reporter and listened to the Velasquez tape to verify the reporter’s claims. Immediately thereafter the Stapleton Campaign confronted Kennedy about the Velasquez tape. Daniel Kennedy both denied the conduct described in the Velasquez tape and denied that he or Kennedy Enterprises had ever employed an individual named Daniel Velasquez. Kennedy insisted that the Velasquez tape—made by the owner of a rival signature-gathering company—was a politically and commercially motivated attack on both Stapleton for Colorado and Kennedy and was therefore suspect. Kennedy stuck to this story. When the Secretary of State’s office confronted Daniel Kennedy regarding the Velasquez tape and Mr. Velasquez’s allegations in it, Kennedy again claimed—this time in writing to the Secretary of State’s office—that he did not know a Daniel Velasquez and that he had never engaged an individual by that name.

4. These lies fell apart on the evening of April 9, 2018 when—in the course of preparing to defend an anticipated legal challenge to its already approved petitions—the Stapleton Campaign learned that Daniel Velazquez existed, had been employed by Kennedy and directly participated as a shadow circulator in gathering signatures on petitions in support of Walker Stapleton. The Stapleton Campaign was thus left in the position of having inadvertently

deceived the Secretary of State's office as to the legitimacy of its signature gathering campaign. In order to remedy Kennedy's misconduct, Walker Stapleton requested that all petitions gathered on his behalf by Kennedy be disqualified and his name be removed from the primary election ballot. Walker Stapleton was subsequently returned to the primary election ballot after winning the Colorado Republican Party's Assembly and Convention on April 14, 2018.

5. The Stapleton Campaign requested a refund from Kennedy Enterprises on May 24, 2018 and again on June 14, 2018. These requests were rejected.

6. The Stapleton Campaign brings this suit to obtain redress for Kennedy's conduct and to vindicate the interest of all Coloradans in ethical and transparent conduct in candidate petition gathering.

## **II. PARTIES**

7. Stapleton for Colorado is the Colorado campaign committee established to support Walker Stapleton's campaign for Governor of Colorado.

8. Defendant Kennedy Enterprises, LLC is a marketing and consulting firm, which, among other things, hires individuals to circulate petitions and gather signatures in support of candidates and ballot issues. Kennedy Enterprises is a Colorado limited liability company having its principal place of business in Colorado Springs, Colorado.

9. Defendant Daniel Kennedy is the principal of Kennedy Enterprises, LLC which he founded in 1992. At all times relevant to this complaint, Daniel Kennedy was the principal contact at Kennedy Enterprises for representatives of Stapleton for Colorado. Daniel Kennedy is a resident of Colorado Springs, Colorado.

## **III. JURISDICTION AND VENUE**

10. This Court has personal jurisdiction over both defendants. Kennedy Enterprises is a Colorado limited liability company with its principal place of business located at 2140 Academy Circle, Suite C, Colorado Springs, Colorado 80909. Daniel Kennedy resides at 6970 Ashley Drive, Colorado Springs, Colorado, 80922.

11. Subject matter jurisdiction is proper in this Court pursuant to Colo. Const. art. VI § 9.

12. Venue is proper in this Court pursuant to C.R.C.P. 98(c)(1) because Denver County is the designated venue pursuant to Section 7.01 of the Agreement between Stapleton for Colorado and Kennedy Enterprises, LLC. **Exhibit 1**, Agreement between Stapleton for Colorado and Kennedy Enterprises, LLC dated October 12, 2017 (the "Agreement"). Denver County is also where Stapleton for Colorado has its primary place of business.

#### **IV. FACTUAL ALLEGATIONS**

##### **A. The Nomination Process for Major Party Candidates in Colorado**

13. Walker Stapleton announced his candidacy for Governor of Colorado on September 23, 2017. Stapleton for Colorado was formed the same day and registered with the Secretary of State on September 28, 2017.

14. Walker Stapleton is a Republican and, accordingly, announced his intention to seek the Republican Party's nomination for Governor.

15. Under Colorado law, the Republican Party is a major political party.

16. Colorado law requires that all nominations by major political parties occur either at a nominating convention convened by the political party or at a primary election.

17. The primary election method of nomination is the default method of nomination for candidates of major political parties. Major political parties must elect to "opt-out" of the primary election on or before October 1 of the year before the election in order to make nominations by nominating convention.

18. Because the Colorado Republican Committee did not elect to "opt-out" of the 2018 primary election by October 1, 2017, it became bound to nominate its 2018 candidate for Governor by primary election.

19. There are two methods by which a major party candidate may seek to have his name designated to the primary election ballot.

20. The first method is to seek designation by the political party's assembly and convention. Any candidate receiving 30% or more of the vote of a major political party's assembly and convention is designated to the primary election ballot. Any candidate receiving less than 10% of the vote of a major political party's assembly and convention is disqualified from accessing the primary election ballot.

21. The second method for a major political party candidate to seek designation to that party's primary election ballot is by nominating petition. A candidate for statewide office seeking to access the primary election ballot by nominating petition must collect at least 10,500 valid signatures of members of that political party, with at least 1,500 valid signatures coming from each of Colorado's seven congressional districts.

22. Under Colorado law, nominating petitions may only be circulated by persons who are at least 18 years of age, citizens of the United States, residents of Colorado, registered to vote and affiliated with the political party of the candidate for whom they will be circulating nominating petitions.

23. At all times relevant to this Complaint, Kennedy was aware of these legal requirements, having been in business in Colorado for over 20 years.

24. In early October, 2017, the Stapleton Campaign decided to pursue Walker Stapleton's designation to the primary election ballot by nominating petition.

**B. Stapleton for Colorado Contracts with Kennedy to Collect Signatures**

25. In order to achieve the 1,500 signatures per congressional district required by law, the Stapleton Campaign hired Kennedy and executed the Agreement attached as Exhibit 1.

26. Pursuant to the Agreement, the Stapleton Campaign desired to "obtain signatures on 2018 Colorado Republican Primary Ballot to gain access to the election and [sought] to engage the services of [Kennedy] to obtain up to 3,000 signatures from each of Colorado's seven congressional districts, for a total of up to 21,000 signatures." Ex. 1, Section 1.

27. Kennedy agreed to circulate petitions for the Stapleton Campaign, review all signatures collected by its circulators and make a good faith effort to determine the validity of each signature, deliver the signatures to the designated Stapleton Campaign representative, and use its best efforts to collect the contracted amount of signatures by March 20, 2018. *See* Ex. 1, Sections 3.01 (a)-(d).

28. The Stapleton Campaign performed all of its obligations pursuant to the Agreement, including:

- a. Providing up to four times the amount of petition sections required by the Agreement in a timely manner as requested by Kennedy;
- b. Making all payments when due;
- c. Engaging only Kennedy for the collection of signatures;
- d. Designating Michael Fortney as the Stapleton Campaign representative to receive and sign a receipt for each batch of signatures submitted; and
- e. Providing Kennedy with an up-to-date Colorado voter list. *See* Ex. 1, Sections 2.01 (a)-(e).

29. The Agreement limits Kennedy's liability for acts or omissions in the performance of the services under the terms of the Agreement to acts or omissions by Kennedy or its Agents which are due to willful misconduct by Kennedy and done without the knowledge and approval of the Stapleton Campaign. Ex. 1, Section 5.01.

30. Pursuant to the Agreement, Stapleton for Colorado paid Kennedy \$11.00 per signature for a total of \$235,821.00.

**C. Kennedy's Misrepresentations to the Stapleton Campaign and the Secretary of State**

31. Kennedy began circulating petitions on behalf of Walker Stapleton's candidacy on January 16, 2018—the first day circulation was permitted under Colorado law.

32. Kennedy provided the Stapleton Campaign with a list of all individuals who would be serving as petition circulators for the Stapleton Campaign along with evidence of their age, Colorado residency and status as registered voters affiliated with the Republican Party.

33. Kennedy provided this information intending that the Stapleton Campaign would rely on it and use it to verify the eligibility of the named individuals to circulate nominating petitions for Walker Stapleton.

34. The list did not include all individuals who would be circulating petitions on behalf of the Stapleton Campaign.

35. Throughout the signature gathering process Kennedy routinely responded to questions or concerns regarding its circulators or signature gathering processes by reminding the Stapleton Campaign that Kennedy had been in business for over 20 years and had never failed to qualify a candidate for whom it circulated petitions for the ballot.

36. However, as Kennedy approached the signature collection target provided for in the Agreement, Daniel Kennedy's tone began to change. He began to urge the Stapleton Campaign to submit signatures as soon as possible.

37. On February 13, 2018, Stapleton Campaign Manager, Michael Fortney, received information that circulators working for Kennedy had been contacted by police officers at a King Soopers store in Littleton, Colorado.

38. Mr. Fortney contacted Daniel Kennedy by telephone to ask about the incident. Mr. Kennedy promised to look into it.

39. Mr. Kennedy never reported back on this incident, but he did begin to make representations to Mr. Fortney and other representatives of the Stapleton Campaign that circulators working for other candidates were “following” or “shadowing” Kennedy’s circulator teams and encouraging persons who had just signed Stapleton petitions to sign petitions for their candidates as well.

40. Kennedy made these representations intending that the Stapleton Campaign would rely on them and be induced to submit signatures sooner than it had planned.

41. On or about February 18, 2018, Kennedy urged the Stapleton Campaign in a text message to “double-check the circulators” on the completed petition sections it had returned to the Stapleton Campaign. When Mr. Fortney, questioned Kennedy on his specific concern about

circulators, Mr. Kennedy claimed he had no specific concern, but was merely advocating diligence.

42. The Stapleton campaign conducted its own verification of the validity of the petition sections circulated by Kennedy. When checking the eligibility of each circulator, it relied on the information in the circulator affidavit on each petition section.

43. On February 22, 2018 representatives of the Stapleton Campaign met with Daniel Kennedy to do a final verification of the petition sections prior to submission to the Secretary of State. At that meeting, Mr. Fortney, asked Mr. Kennedy if there was anything else the Stapleton Campaign should know before submitting its petitions to the Secretary of State. Mr. Kennedy responded that there was not.

44. The Stapleton Campaign submitted the petitions gathered by Kennedy the morning of Friday, February 23, 2018. The Stapleton Campaign was the first Republican gubernatorial campaign to submit its signatures to the Secretary of State.

#### **D. Kennedy's Fraudulent Concealment – Police Contact with Circulator**

45. At the time it submitted its petitions to the Secretary of State, Stapleton for Colorado was unaware that Kennedy was concealing important information.

46. Approximately one week after it submitted its petitions to the Secretary of State, the Stapleton Campaign received additional information regarding the alleged contact between police officers and circulators working for Kennedy at a King Soopers store in February 2018.

47. Mr. Fortney again followed up with Daniel Kennedy regarding this alleged incident. This time, Mr. Kennedy got back to Mr. Fortney and confirmed that police officers had contacted two of his employees in early February 2018.

48. Eventually, Mr. Kennedy provided the Stapleton Campaign with contact information for one of those employees—a circulator named Carven Exantus.

49. Representatives of the Stapleton Campaign contacted Mr. Exantus by phone. Mr. Exantus confirmed that he and another Kennedy employee, Manny Urbizo, had been contacted by police when the manager of a King Soopers store in Littleton had complained about their presence outside his store.

50. Mr. Exantus stated that the police had confirmed his ability to circulate petitions and had taken no further action.

51. Mr. Exantus also stated that Mr. Urbizo had been a “trainee” at the time he was working with Mr. Exantus. Asked to explain what Mr. Urbizo was doing, Mr. Exantus stated that Mr. Urbizo was “new” at the time and had not yet registered to vote. Hence, he could not

circulate petitions, but was there to observe Mr. Exantus and to encourage voters to sign the petition Mr. Exantus was circulating.

52. This was the first time the Stapleton Campaign had learned that “trainee” circulators had assisted in gathering signatures for the Stapleton Campaign.

53. The Stapleton Campaign asked Mr. Kennedy to explain this practice. He told representatives of the Stapleton Campaign that “trainee” circulators occasionally assisted circulators in the manner Mr. Urbizo had assisted Mr. Exantus: that is they would observe the circulator and encourage individuals to sign the petition being circulated by the circulator they were observing.

54. The Stapleton Campaign asked Mr. Kennedy why Mr. Urbizo was not included on the list of circulators provided to it. Mr. Kennedy stated that Mr. Urbizo was not included on that list because he never circulated petitions for the Stapleton Campaign.

55. Mr. Kennedy pointed out that Mr. Urbizo had gone on to become a full-time circulator and had, in fact, circulated petitions for other campaigns that had contracted with Kennedy.

56. At the time, the Stapleton Campaign accepted this explanation from Kennedy.

#### **E. Kennedy’s Fraudulent Concealment – Polly Lawrence Campaign**

57. Polly Lawrence is a Republican candidate for State Treasurer. The signature requirements for candidates for State Treasurer seeking designation to the Republican primary ballot by nominating petition are the same as those for candidates for Governor.

58. Ms. Lawrence’s campaign contracted with a company called Blitz Canvassing, LLC (“Blitz Canvassing”) to gather signatures in support of her candidacy for State Treasurer.

59. On information and belief, Blitz Canvassing subcontracted to or otherwise engaged Kennedy Enterprises and/or its circulators to gather signatures in support of Ms. Lawrence’s campaign.

60. On or around February 13, 2018, Ms. Lawrence’s campaign expressed concerns to Blitz Canvassing and Kennedy Enterprises regarding the validity of the signatures collected by Kennedy Enterprises circulators on its behalf.

61. Specifically, Ms. Lawrence’s campaign expressed concern about Kennedy’s use of “trainee” circulators to gather signatures. These “trainee” circulators were individuals who circulated petitions, but who were not eligible to do so because they had not registered to vote and/or were not affiliated with the Republican Party.

62. Ms. Lawrence's campaign expressed concern that these "trainee" circulators would circulate petition sections and then pass the sections off to qualified circulators who would execute the circulator affidavit on the petitions as though they—and not the "trainee" circulator—had circulated the petition.

63. On information and belief, Ms. Lawrence's campaign learned of Kennedy's use of "trainee" circulators when an individual working with the campaign of another Republican gubernatorial candidate informed Ms. Lawrence's campaign of the practice.

64. The same gubernatorial campaign did not inform the Stapleton Campaign because it intended to use this information to file a legal challenge to Walker Stapleton's petitions after they were submitted.

65. On information and belief, while Kennedy defended the legality of the practice, Blitz Canvassing and Kennedy Enterprises agreed to re-collect all signatures collected for Ms. Lawrence's campaign by circulators who worked with "trainee" circulators. This specifically included all signatures gathered by circulator Carven Exantus.

66. Kennedy did not notify the Stapleton Campaign that it used "trainee" circulators to collect petition signatures.

67. Kennedy did not provide the Stapleton Campaign with a list of names of "trainee" circulators.

68. Kennedy did not offer to re-circulate the petition sections collected by circulators who worked with "trainee" circulators for the Stapleton Campaign.

69. Instead, Kennedy urged the Stapleton Campaign to submit its signatures as soon as possible.

#### **F. Kennedy's Fraudulent Concealment – The Velasquez Recording**

70. Approximately two weeks after submitting its petitions to the Secretary of State, the Stapleton Campaign was contacted by a reporter, regarding a recording of a telephone conversation between a person working for another Republican candidate for governor and an individual named Daniel Velasquez (the "Velasquez tape").

71. Michael Fortney met with the reporter to listen to the Velasquez tape.

72. In the Velasquez tape, Mr. Velasquez—who sounded to be seeking work with the individual speaking with him—claimed to have gathered signatures on behalf of the Stapleton Campaign along with his crew of "rowdy individuals."

73. Mr. Velasquez also represented in the recording that "most of [his] people can't even register to vote because they're all felons."

74. Mr. Fortney contacted Daniel Kennedy the same day he listened to the Velasquez tape.

75. Mr. Fortney asked Mr. Kennedy to explain the Velasquez tape and the statements made in it.

76. In response to Mr. Fortney's questions, Mr. Kennedy insisted he did not know a Daniel Velasquez and that no one by that name had worked or circulated petitions for Kennedy.

77. Mr. Kennedy surmised that the individual who recorded the conversation—himself the owner of a rival signature gathering firm working for another gubernatorial candidate—had a motivation to stage the conversation.

78. Kennedy continued to insist that he and his company had followed all applicable laws and regulations in the collection of petition signatures for the Stapleton Campaign.

79. On or about March 23, 2018, the Secretary of State's office e-mailed Daniel Kennedy inquiring about the identity of Daniel Velasquez and asking about the Velasquez tape. Mr. Kennedy called representatives of the Stapleton Campaign and again insisted that nobody by the name of Daniel Velasquez had been employed by his company to circulate petitions on behalf of Stapleton for Colorado.

80. Mr. Kennedy requested the assistance of Stapleton for Colorado in preparing a responsive e-mail to the Secretary of State. Relying on Mr. Kennedy's representations, Stapleton for Colorado provided Mr. Kennedy with a draft e-mail reply to the Secretary of State.

81. Mr. Kennedy edited this draft and responded to the Secretary of State on March 24, 2018. This e-mail again represented that Kennedy had not employed an individual named Daniel Velasquez and that no person by that name had circulated petition sections on behalf of Stapleton for Colorado.

82. Kennedy was acutely aware of the Stapleton Campaign's concerns regarding the validity of signatures gathered by petition circulators, especially after the parties' discussion regarding Manny Urbizo's work as a "trainee" circulator and the Velasquez tape.

83. Upon information and belief, Kennedy willfully omitted other candidates' concerns regarding the validity of signatures it gathered during its conversations with the Stapleton Campaign in an effort to conceal the fact that Kennedy illegally used "trainee" shadow circulators to gather petition signatures.

84. Kennedy knew he was withholding material information from the Stapleton Campaign when he deliberately failed to notify it there may be an issue regarding the validity of the signatures on the petitions.

85. Kennedy intended that Stapleton for Colorado would rely on its concealment and believe the signatures on the petitions were legally gathered by Kennedy's circulators.

#### **G. The Stapleton Campaign Discovers the Truth**

86. On April 3, 2018, several Republican electors from Colorado's Fifth Congressional filed a Verified Petition for relief against the Secretary of State regarding signatures gathered in support of the re-election campaign of Congressman Doug Lamborn. The Verified Petition alleged a material number of signatures on Mr. Lamborn's petitions were gathered by the illegal use of circulators who were not residents of Colorado.

87. Mr. Lamborn's campaign used Kennedy to circulate his nomination petitions.

88. Because several of the same circulators alleged to be non-residents in the Verified Petition were identified by Kennedy as circulators for the Stapleton Campaign, the Stapleton Campaign moved to intervene in the Lamborn matter to defend these circulators' residency and qualification to circulate nominating petitions.

89. In order to prepare for court in the Lamborn matter, the Stapleton Campaign received Kennedy's permission to call each and every circulator who had worked on the Lamborn and Stapleton petitions and ask them questions regarding their qualifications and their petition circulating practices.

90. On the evening of April 9, 2018—the night before the hearing in the Lamborn matter—an attorney representing the Stapleton Campaign interviewed Carven Exantus. During this interview Mr. Exantus revealed that Daniel Velasquez had helped him circulate petitions as a "trainee" circulator. Mr. Exantus stated further that Mr. Velasquez had actually circulated petitions—not merely observed him.

91. That same evening and almost simultaneously to the interview of Mr. Exantus, Michael Fortney received information from a reporter that Daniel Velasquez, despite Kennedy's denials, had indeed circulated petitions for the Stapleton Campaign and that he may have marked the cover pages of petition sections he circulated. Mr. Fortney immediately called Mr. Kennedy and confronted him with this information. At this time Mr. Kennedy continued to deny that he knew who Daniel Velasquez was or that anyone by this name had worked for his company. However, within minutes of ending that phone call, Mr. Kennedy called Mr. Fortney back and, for the first time, admitted that Daniel Velasquez had, in fact, worked for his company and had, in fact, circulated petitions on behalf of the Stapleton Campaign.

92. When questioned as to how Daniel Velasquez could have circulated petitions given that his name did not appear on any circulator affidavit, Mr. Kennedy stated that Mr. Velasquez was a "trainee" circulator who had only circulated for a "few days." Mr. Kennedy revealed that at least two circulators—Mr. Exantus and a person named Patricio Diaz—who had worked on the Stapleton Campaign petitions had used Mr. Velasquez as a "trainee."

93. Mr. Kennedy further revealed that Ms. Lawrence's campaign had asked that signatures gathered by Mr. Exantus and Mr. Diaz be re-collected because of their use of a "trainee" shadow circulator.

94. When he was asked why he had not informed the Stapleton Campaign about the use of "trainee" shadow circulators to circulate petitions, Mr. Kennedy argued that it was immaterial and that "everyone" in the petitioning industry employs this fraudulent practice.

#### **H. Stapleton For Colorado Withdraws Its Petitions**

95. The next morning Walker Stapleton withdrew his petition signatures and asked the Secretary of State remove his name from the Republican primary election ballot. See April 10, 2018 letter to Secretary of State Wayne Williams attached as **Exhibit 2**. Mr. Stapleton did this because of Kennedy's fraudulent practice of allowing shadow circulators to circulate petitions and then have others sign the circulator affidavits on those petitions as though they—and not the shadow circulator—had collected the signatures.

96. As a result of withdrawing from the primary ballot, the Stapleton Campaign was injured in the amount of at least \$260,614.00, the total amount paid to Kennedy for the petition signatures it gathered. In truth, the cost far exceeded this amount because of the necessity to expend thousands of dollars pursuing—and eventually winning—designation to the primary ballot at Colorado Republican Party Assembly and Convention held just four days after Mr. Stapleton's decision to voluntarily withdraw the petitions collected by Kennedy.

97. All conditions precedent have been performed or have occurred.

#### **V. CLAIMS FOR RELIEF**

##### **FIRST CLAIM FOR RELIEF** **(Breach of Contract against Kennedy Enterprises, LLC)**

98. The Stapleton Campaign incorporates by reference and restates Paragraphs 1-97 of the Complaint.

99. The Stapleton Campaign and Kennedy Enterprises entered into a valid and enforceable Agreement on or around October 12, 2017. *See Ex. 1.*

100. The primary purpose of the Agreement was to engage Kennedy Enterprises to obtain up to 3,000 signatures from each of Colorado's seven congressional districts, for a total of up to 21,000 signatures, on behalf of the Stapleton Campaign.

101. The Stapleton Campaign met all of its obligations pursuant to the Agreement, including: (a) providing up to four times the amount of petition sections required for the Agreement in a timely manner as requested by Kennedy; (b) making all payments when due; (c) engaging only Kennedy for the collection of signatures; (d) designating Michael Fortney as the

representative to receive and sign a receipt for each batch of signatures submitted; and (e) providing Kennedy with an up-to-date Colorado voter list.

102. Kennedy Enterprises, however, failed to perform pursuant to the Agreement.

103. Specifically, Kennedy Enterprises did not make good faith efforts to determine the validity of the signatures it gathered on behalf of the Stapleton Campaign.

104. Indeed, Kennedy Enterprises used illegal shadow circulators to help circulate petitions on behalf of the Stapleton Campaign.

105. The signatures gathered with the aid of the shadow circulators are not valid.

106. The Stapleton Campaign, however, paid Kennedy Enterprises a total of \$235,821.00, at the rate of \$11.00 per signature, under the false pretense that the signatures were valid.

107. Kennedy Enterprises' use of shadow circulators in violation of Colorado law was willful misconduct.

108. Kennedy Enterprises' use of shadow circulators was done without the knowledge or approval of the Stapleton Campaign.

109. Kennedy Enterprises' willful misconduct done without the knowledge or approval of the Stapleton Campaign makes Kennedy liable to the Stapleton Campaign for breach of contract.

110. As a direct and proximate result of Kennedy Enterprises' breach of contract, Stapleton for Colorado was damaged in an amount to be determined at trial.

#### **SECOND CLAIM FOR RELIEF**

#### **(Fraudulent Misrepresentation against Kennedy Enterprises, LLC and Daniel Kennedy)**

111. The Stapleton Campaign incorporates by reference Paragraphs 1-110 of the Complaint.

112. On or about March 6, 2018 Stapleton for Colorado Campaign Manager, Michael Fortney, was contacted by a reporter about the Velasquez tape.

113. In the Velasquez tape, Mr. Velasquez claimed to have gathered signatures on behalf of the Stapleton Campaign. Mr. Velasquez also represented in the recording that "most of [his] people can't even register to vote because they're all felons."

114. After listening to the Velasquez tape, Mr. Fortney contacted Daniel Kennedy regarding the identity of Daniel Velasquez and the veracity of his statements in the recording.

115. In response to Mr. Fortney's questions, Mr. Kennedy fraudulently represented that he did not know a Daniel Velasquez and that no one by that name had worked or circulated petitions for Kennedy.

116. The existence of Daniel Velasquez and his employment by Kennedy was a highly material fact.

117. If Daniel Velasquez did exist and had circulated petitions for Kennedy on behalf of Stapleton for Colorado, all of the signatures collected by him would have been invalid.

118. More importantly, if Daniel Velasquez did exist and had circulated petitions for Kennedy on behalf of Stapleton for Colorado, it would reveal Kennedy's illegal circulating practice of using shadow circulators.

119. Kennedy intended for Stapleton for Colorado to rely on its misrepresentation in order to conceal his unethical and unlawful petition circulating practices.

120. In reliance on Kennedy's statements regarding Daniel Velasquez, and believing Daniel Velasquez did not exist or circulate petitions for Kennedy on its behalf, Stapleton for Colorado defended the signatures it submitted on February 23, 2018 and did not immediately pursue designation to the Republican primary election ballot by the Republican State Assembly and Convention, which was then over a month away.

121. The Stapleton Campaign's reliance on Mr. Kennedy's misrepresentation that Daniel Velasquez did not exist and had never worked for Kennedy was justifiable, especially considering Mr. Kennedy made similar statements to the Secretary of State.

122. Kennedy knew the Stapleton Campaign was relying on Daniel Kennedy's statement that Daniel Velasquez did not work or circulate petitions for Kennedy when Stapleton for Colorado assisted him in preparing an e-mail to the Secretary of State's office which doubled-down on Mr. Kennedy's statement.

123. As a direct and proximate result of Kennedy's fraudulent misrepresentation of material fact, Stapleton For Colorado was damaged in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF**  
**(Fraudulent Concealment against Kennedy Enterprises, LLC and Daniel Kennedy)**

124. The Stapleton Campaign incorporates by reference and restates Paragraphs 1-123 of the Complaint.

125. Polly Lawrence's campaign used Kennedy circulators to circulate petitions in support of Polly Lawrence's bid for state treasurer.

126. On or about February 13, 2018, Ms. Lawrence's campaign raised concerns with Kennedy regarding the validity of signatures collected by its circulators.

127. In particular, Ms. Lawrence's campaign informed Kennedy that it had learned Kennedy used "trainee" circulators to gather signatures on behalf of Ms. Lawrence's candidacy.

128. As a result, Kennedy agreed to circulate additional petitions and gather more signatures for Ms. Lawrence's campaign.

129. Without knowledge of Kennedy's use of "trainee" shadow circulators, the Stapleton Campaign was paying Kennedy \$11.00 per signature to collect and review all signatures gathered by its circulators and make good faith efforts to determine the validity of such signatures.

130. Accordingly, any potential issue regarding the validity of the signatures gathered by Kennedy on behalf of the Stapleton for Colorado would have been material.

131. Kennedy should have disclosed its use of shadow circulators to the Stapleton Campaign because it knew the Stapleton Campaign was relying on it to make good faith efforts to determine the validity of signatures.

132. Kennedy knew it was concealing issues concerning the validity of the signatures it collected using shadow circulators on behalf of various 2018 campaigns.

133. The Stapleton Campaign was unaware that Kennedy concealed concerns regarding the validity of signatures it had collected on behalf of various 2018 campaigns.

134. The Stapleton Campaign did not learn Kennedy had been alerted to validity issues with the signatures it had collected for various campaigns until April of 2018.

135. Kennedy intended for the Stapleton Campaign to rely on its concealment so that it would not ask for Kennedy to collect additional signatures, request reimbursement, accuse it of breach of contract, or discover its unethical and unlawful petition circulating practices.

136. As a direct result of Kennedy's fraudulent concealment regarding potentially invalid signatures, Stapleton for Colorado was damaged in an amount to be determined at trial.

**FOURTH CLAIM FOR RELIEF**  
**(Civil Theft against Daniel Kennedy)**

137. The Stapleton Campaign incorporates by reference and restates Paragraphs 1-136 of the Complaint.

138. By his illegal use of shadow petition circulators, and by concealing their use from the Stapleton Campaign, Daniel Kennedy deceived the Stapleton Campaign into parting with \$260,614.00 for the collection of signatures on Walker Stapleton's behalf.

139. On information and belief, Daniel Kennedy is personally now in possession of most of the \$260,614.00 paid to Kennedy Enterprises on the basis of his deception.

140. Under Colorado law, the owner of property stolen by deception may maintain an action not only against the taker thereof but also against any person in whose possession he finds the property.

141. In such an action, the owner may recover two hundred dollars or three times the amount of the actual damages sustained by him, whichever is greater, and may also recover costs of the action and reasonable attorney fees.

142. Because Mr. Kennedy is in possession of the Stapleton Campaign's property, which was stolen by deception, the Stapleton Campaign is entitled to an award of three times its actual damages to be proven at trial and the costs of this action, including reasonable attorney fees.

**FIFTH CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty against Kennedy Enterprises, LLC and Daniel Kennedy)**

143. Stapleton For Colorado incorporates by reference and restates Paragraphs 1-142 of the Complaint.

144. Kennedy was acting as a fiduciary to Stapleton For Colorado.

145. The Stapleton Campaign trusted and relied on Kennedy to ethically and lawfully circulate petitions and gather the requisite valid signatures to get Walker Stapleton's name on the 2018 gubernatorial primary ballot.

146. Kennedy breached its fiduciary duty to Stapleton for Colorado when it violated the Stapleton Campaign's trust and unethically and unlawfully failed to disclose that it was gathering petition signatures using shadow circulators, failed to disclose its use of shadow circulators, and ultimately charged Stapleton for Colorado for thousands of invalid signatures.

147. Kennedy further breached its fiduciary duty to the Stapleton Campaign when it failed to notify Stapleton for Colorado that there may be validity issues with regard to the signatures it gathered its behalf – at the very least after learning of such concerns from Polly Lawrence's campaign for Treasurer.

148. The Stapleton Campaign incurred damage to its reputation as well as monetary damages in the amount of at least \$260,614.00.

149. Kennedy's breach of its fiduciary duty is the cause of Stapleton for Colorado's damages.

150. As a direct result of Kennedy's breach of its fiduciary duty, Stapleton for Colorado was damaged in an amount to be determined at trial.

**SIXTH CLAIM FOR RELIEF**  
**(Unjust Enrichment - In the Alternative to the First Cause of Action against Kennedy Enterprises, LLC)**

151. The Stapleton Campaign incorporates by reference and restates Paragraphs 1-150 of the Complaint.

152. The Stapleton Campaign pleads this claim in the alternative to its First Cause of Action, in the event the parties' Agreement is found to have failed or the Stapleton Campaign is found to have no rights under the parties' Agreement, or if the parties' dispute is found to be outside the subject matter of the parties' Agreement.

153. Kennedy Enterprises was unjustly enriched at the expense of the Stapleton Campaign.

154. The Stapleton Campaign paid Kennedy Enterprises \$260,614.00, at the rate of \$11.00 per signature, in exchange for the signatures it gathered on behalf of the Stapleton Campaign for which the Stapleton Campaign had specific expectations of which Kennedy Enterprises was aware.

155. Kennedy Enterprises knowingly accepted and benefited from the payment of \$260,614.00 at Stapleton for Colorado's expense.

156. Kennedy Enterprises failed to deliver to Stapleton for Colorado valid signatures on its petitions. In particular, Kennedy Enterprises delivered thousands of invalid signatures due to its illegal use of shadow circulators, but received payment from Stapleton for Colorado at the rate of \$11.00 per signature.

157. Accordingly, Kennedy Enterprises' use of illegal shadow circulators called into question the validity of every signature collected by Kennedy on behalf of Stapleton for Colorado.

158. When the Stapleton Campaign paid Kennedy Enterprises \$11.00 per signature, it did not know that the signatures were gathered in violation of Colorado law.

159. Under these circumstances, it would be unjust to allow Kennedy Enterprises to retain the benefit of the \$260,614.00 payment made at the expense of Stapleton for Colorado for its unethical, unlawful, and fraudulent conduct.

160. Accordingly, Stapleton for Colorado seeks restitution and disgorgement of profits for the funds unjustly retained by Kennedy Enterprises in an amount to be proven at trial, but in excess of jurisdictional requirements exclusive of interest and costs.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for relief as follows:

- (1) That judgment be entered in favor of Plaintiff and against Defendant in an amount to be determined at trial;
- (2) That the Agreement be rescinded, and Kennedy be required to pay restitution to Stapleton for Colorado and disgorge the profits obtained by Kennedy as a result of its unjust enrichment;
- (3) That Plaintiff be awarded pre- and post- judgment interest on the judgment;
- (4) That Plaintiff be awarded its costs of suit, including reasonable attorneys' fees; and
- (5) That the Court award Plaintiff such other and further relief as is just and proper.

## **VII. DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury on all claims so triable.

Dated June 25, 2018

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